

Systemic Violence and Disability Protections for Central American Migrants in Detention

Undergraduate Honors Research Thesis

Presented in partial fulfillment of the requirements for graduation

With *honors research distinction* in Spanish in the College of Arts & Sciences at

The Ohio State University

By

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April 2020

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Dedicated to: All of the staff, volunteers, and clients that I have had the honor of working with at the Immigration Counseling Services Pro Bono Legal Clinic in Central Ohio.

Additional Thanks: First, thank you to my wonderful thesis advisors, Professor Ana Del Sarto and Professor Inés Valdez Tappatá. Thank you for your guidance and support as I worked to bring together multiple perspectives on Central American immigration and for assisting me with applying for an Undergraduate Research Scholarship. Thank you to my advisors and Professor Rachel Bowen from the Department of Political Science for serving on my thesis defense committee and taking the time to meet and review my work. I would also like to thank Professor Margaret Price from the Department of English, whose classes on Health and Illness Activism have given me the tools and confidence to advocate for disability rights. Finally, thank you to the staff and volunteers at the Immigration Counseling Services Pro Bono Legal Clinic for introducing me to immigration law and to Case Western Reserve University School of Law for giving me the opportunity to continue studying Immigration and Human Rights Law.

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Section One: Introduction, Research Methods, Structure

In recent years, immigration from the Northern Triangle of Central America (El Salvador, Guatemala, and Honduras) to the United States has soared (Noe-Bustamante and Shah, 2019, a, b, c). From 2000 to 2017, numbers of Salvadoran-, Guatemalan-, and Honduran-born individuals residing in the U.S. have risen from 711,000 to 2.3 million, 406,000 to 1.4 million, and 237,000 to 940,000, respectively (Noe-Bustamante and Shah, 2019, a, b, c). In response to these influxes, the U.S. Department of Homeland Security's (DHS) Immigration and Customs Enforcement (ICE) has vastly expanded the immigrant detention system (Kassie, 2019). The Guardian and The Marshall Project's multimedia project, "Detained: How the US built the world's largest immigrant detention system," outlines staggering increases in annual immigrant detainments from roughly 100,000 individuals in the 1990's to about 500,000 in 2019 (Kassie, 2019).

ICE's capacity to expand immigrant detention results from increases to the DHS budget, which despite allocating funds to increase the scale of immigrant detention to hold more immigrants for longer periods of time, has deliberately failed to innovate detention's infrastructure to meet the medical needs of this larger detained population. The inadequacy of detainee medical care places certain groups, such as Central American migrants¹, in a particularly vulnerable position, as the inhumane conditions in detention centers can cause new health concerns while also exacerbating pre-existing conditions resulting from the violence and trauma experienced during migration. Scholars, such as Sara Riva, have theorized that the immigrant detention system's inhumane treatment of Central American migrants is fueled by

¹ See pages 5-6 for a definition of "Central American migrants" as a cultural group.

U.S. society's gendered, racialized, and sexualized view of Central American immigrants², which enables agencies, such as ICE, to cast them as criminals deserving of detention (Riva, 2017). In this paper, I build upon such theories by proposing that a Latin American cultural studies perspective on the systemic violence in the migration process reveals that the ICE immigrant detention system is one of multiple stages in a chain of systemic violence that drives and regulates transnational migration from the Northern Triangle of Central America to the U.S.

Latin American cultural studies is a field of inquiry that investigates and analyzes “the symbolic production and living experiences of social reality in Latin America and their connection to “social, political, and material relations” through which the collective identities of Latin American cultural groups evolve (Trigo, 2004, pp. 3-4). For the purposes of this paper, Óscar Martínez's investigative works, *The Beast* (2013) and *A History of Violence* (2016), serve as Latin American cultural texts because they provide interviews with migrants from Central American countries who testify to their lived experience with violence during migration from the Northern Triangle to the U.S. In addition, cultures involve historically and geographically contextualized institutions and lived experiences, which develop through certain modes of production, distribution, and consumption (Trigo, 2004, p. 4). Using that definition to identify Central American migrants as a cultural group, I propose that experiences with violence in the Northern Triangle produce the need for many Central Americans to migrate north, thereby entering the “institution” or process of migration, which unites them through shared experiences with violence during the journey from the Northern Triangle through Mexico to the United

² “Central American immigrants” refers to the larger group of Central American-born individuals residing in the U.S.

States. In Section II, I will also examine the history of migration from El Salvador to the United States from the 1980's to the present day in order to contextualize this process.

I also draw upon Latin American cultural studies' practice of producing objects of study through investigating cultural texts (Trigo, 2004, p. 4). Analyzing testimonies of Central American migrants' experiences with violence across all stages of migration reveals that violence is not just present during migration, but rather that systemic violence drives and regulates the entire migration experience from initial decisions to migrate, the journey north through Mexico, and deterrence strategies in the U.S. immigrant detention system. This analysis employs a Latin American cultural studies perspective by examining how global systemic violence produces, drives, and regulates the Central American migrants' lived experiences during migration. Systemic violence involves violence inherent to the "system" that creates and sustains relationships of domination and exploitation (Zizek, 2008, p. 9). While systemic violence may include direct physical violence, it also involves non-physical forms of violence, such as threats of violence or socioeconomic barriers to accessing needs (Zizek, 2008, pp. 9-10). In the context of systemic violence in the migration experience, the "system" is constituted by the migration process from the Northern Triangle to the U.S., while the forms of violence inherent to the system include targeted violence by gangs and economic vulnerability in El Salvador, which motivate entry into the migration process; organized crime's regulation of migratory pathways in Mexico through targeted violence and threats of violence against migrants; and the ICE immigrant detention system's deterrence strategies, which include inhumane treatment of detained immigrants and deliberate failure to provide adequate healthcare.

The latter two stages of the migration process also subject migrants to biopolitical domination and exploitation from Mexico's crime organizations and the U.S. government. Biopolitics, according to Foucauldian notions, refers to regulating a population by exercising power and punishment over it in order to protect the whole from an internal or external threat (Valdez, 2016, p. 642). First, due to its central location for the war on drugs, Mexico has increasingly militarized its law enforcement, leading to increases in road-side checkpoints and raids, which forces Central American migrants to travel along the more clandestine routes regulated by organized crime (Vogt, 2018, p. 3). This forces Central American migrants under the dominating and exploitative control of organized crime who regulate migration through targeted abuse, sexual assault, extortion, and kidnappings in order to maximize profits from migrants forced to travel along their routes (Vogt, 2018, p. 3). In this case, both the governing body and the whole could be conceived as the crime organization, while the potential threat is loss of absolute control over profit-generating trafficking routes. For this reason, organized crime controls migrant populations with biopolitics to protect its interests. The U.S. government also regulates the Central American migrant population with biopolitics by forcing it through an intentionally violent and inhumane detention system meant to deter immigration. This act is biopolitical because it exercises dominating power over immigrants in order to deter their entry into the U.S. and quicken deportation orders due to criminalized views that identify Central American migrants as a threat to U.S. society. The use of biopolitics in both of these stages serve as forms of systemic violence for the ways in which they create and sustain organized crime's and the U.S. governments' dominating and exploitative relationships over the Central American migrant population.

A Latin American studies approach to evaluating systemic violence during migration reveals that entry into the migration process, the journey through Mexico, and reception in the U.S. are interconnected and equally violent stages of a unified migration process. By linking each stage of migration from the Northern Triangle through Mexico to the U.S., systemic violence unites migration as a transnational process. Transnationalism involves acts that transgress borders of nation states and processes through which migrants forge social relationships that cross geographic, cultural, and political borders (Trigo, 2017). Arjun Appadurai posits that geographic localities are legible spaces that are collectively traversed in contexts with relatively known and shared histories (1996, p. 42). He also expresses that in our increasingly globalized world, cultural groups often travel throughout and pertain to territories claimed by a combination of different nation states (Appadurai, 1996, p. 51). Wendy Vogt's explanation of transit migration, or the process through which migrant populations travel transnationally, expands upon the idea of travel that blurs national borders by not only considering migrants' origins and destinations, but also pathways and processes that connect the two (Vogt, 2018, pp. 6-7). This paper analyzes how systemic violence links the origins, pathways, and destinations of migration from the Northern Triangle through Mexico to the U.S. in order to establish this journey as a unified process that traverses and envelops territories from multiple nation-states. For this reason, I refer to migration in the context of this paper as transnational migration.

For the ways in which it illuminates the production and regulation of Central American migrants' lived experiences in the context of migration, the systemic violence inherent to the transnational migration process and its biopolitical regulation of Central American migrants

serve as the primary objects of study for the Latin American cultural studies perspective in this paper. However, Latin American cultural studies often also inform or interact with other areas (Trigo, 2004, p. 9). To that end, I argue that my Latin American cultural studies account of the systemic violence in transnational migration could inform disability activism efforts regarding detained immigrants' disability health rights because the physical and psychological effects of systemic violence during transnational migration could potentially qualify all Central American migrants for disability protections in the U.S. Central American migrants' potential diagnoses as disabled would deem federal disability law applicable to the detention centers holding them, and analyzing ICE's biopolitical deterrence strategies of inhumane treatment and inadequate healthcare in detention as violating federal disability law would provide disability rights organizations a legal argument to push for concrete change to the immigrant detention system.

Such an argument could help transform current disability rights organizations' efforts from advocacy to activism. Health advocacy focuses more on education and works within the existing system and biomedical model (Zoller, 2005, p. 344). Due to a legal mandate that allows disability rights organizations to gain access to otherwise restricted facilities, Protection and Advocacy (P&A) Groups have entered detention centers and published reports on conditions inside in order to inform the public on inhumane treatment of detained immigrants, but these groups have not yet taken concrete action to push for reforms to the immigrant detention system (Smith, 2019). In order to transition from health advocacy to health activism, P&A groups would need to challenge the existing order and power dynamics of detention that negatively influence detained immigrants' health (Zoller, 2005, p. 344). In order to make this move, I propose that disability rights organizations file a class action lawsuit against ICE using the

argument that the effects of systemic violence during transnational migration qualify Central American migrants under disability and that ICE is currently in violation of their disability health rights to adequate healthcare, freedom from discrimination, and due process. P&A Groups could use their special privilege to enter detention centers to collect evidence and interview detained immigrants to serve as plaintiffs for the lawsuit. The approval and enforcement of such a case could potentially secure disabled detained immigrants' earlier release from detention and offer partial relief from the added trauma of that stage in the transnational migration process. Despite the hopeful aims of this action, the practical likelihood of this case passing and its rulings' enforcement are up for serious debate, which I will address in Section IV.

Section I, written above, describes the introductory context and framework for this paper. Section II works to analyze the systemic violence that links, drives, and regulates each stage of the transnational migration process. In an effort to avoid generalizing the diverse immigrant populations that pass through ICE detention, for the first stage of migration in the Northern Triangle, this paper focuses specifically on El Salvador. In order to contextualize Salvadoran migration to the U.S., I begin with a historical overview of U.S.-Salvadoran relations and immigrant reception from the 1980's to the present day, as evidenced by articles published in scholarly journals. Next, I draw upon migrant testimony in Óscar Martínez's investigative works, *The Beast* (2013) and *A History of Violence* (2016), in order to analyze the systemic violence that pervades the first two stages of the transnational migration experience. I then supplement Martínez's work with medical studies published in scholarly journals and the University of Minnesota's and the National Institute of Mental Health's online sources to evaluate the effects of violence and trauma on migrants' physical and psychological health.

In Section III of the paper, I provide evidence to support the claims that detention serves as the next stage in a chain of systemic violence, that the effects of trauma and violence in transit qualify Central American migrants under disability, and that ICE's deterrence strategies of inhumane treatment and poor healthcare access violate disabled detained immigrants' disability health rights to adequate healthcare, freedom from discrimination, and due process during asylum and deportation proceedings. In order to support these claims, I first evaluate migrant testimony from "The Flores Exhibits" (2019) and reports on detention centers' inhumane conditions and healthcare practices to argue that ICE's deterrence strategies serve as forms of systemic violence that produce and sustain biopolitical dominating relationships. I then examine how Central American migrants' health concerns identified in Section II qualify under disability as defined by the American's with Disabilities Act (ADA) Amendments Act of 2008 and argue that the systemic violence in ICE's deterrence strategies violate federal disability, discrimination, and due process law established in the Rehabilitation Act of 1973 and the Due Process Clause of the 5th Amendment of the Constitution.

Finally, in Section IV, I advocate for disability health organizations to file a class action lawsuit against ICE using the argument that the effects of systemic violence during transnational migration qualify Central American migrants under disability and that ICE is currently in violation of their disability health rights. I then propose that the hopeful affirmative ruling and enforcement of this lawsuit could provide legal precedent for a future case that would push for the release of all detained immigrants on the grounds of health rights violations. I engage in a discussion of the practical possibilities of such a case actually resulting in enforceable change, referencing reforms to ICE's healthcare infrastructure would need to make the case possible and

past and present evidence of ICE's noncompliance with court rulings. Finally, I address concerns regarding the proposed case's position in humanitarian debates and explain my decision to focus narrowly on relief for disabled detained immigrants for the purposes of this paper.

Section Two: Systemic Violence in Transnational Migration and Associated Health Effects

History of Salvadoran-U.S. Relations and Migration Patterns

Systemic violence drives and regulates the entire migration experience from initial decisions to migrate, the journey north through Mexico, and deterrence strategies in the U.S. immigrant detention system. The following analysis will demonstrate how systemic violence links together each of these stages to establish transnational migration as a unified process. In the initial entry stage, experiences with violence in El Salvador produce the need for many Salvadorans to enter the transnational migration process, where they will travel across the borders and territories of the Northern Triangle, Mexico, and the U.S. under the dominating and exploitative social relationships of Mexico's crime organizations and the U.S. government. Violence's many forms have driven migration from El Salvador to the U.S. for decades, so, in order to contextualize these migration flows, I will first provide a historical overview of U.S.-Salvadoran relations and immigrant reception from the 1980's to the present day.

Much of the migration from El Salvador to the U.S. in the 1980's occurred as a result of violence inflicted on political rivals and civilians during the Salvadoran Civil War from 1980 to 1992 (The Center for Justice and Accountability, 2009). The violent conflict between El Salvador's right-wing government and paramilitary groups and leftist sympathizers officially escalated to Civil War in 1980, following the murder of human rights advocate, Archbishop

Óscar Romero (The Center for Justice and Accountability, 2009). Archbishop Romero's assassination was orchestrated by U.S. Army School of the Americas-trained officer, Roberto D'Aubisson, who founded the right-wing Nationalist Republican Alliance Party (ARENA), which opposed the leftist Farabundo Martí National Liberation Front's (FMLN) guerilla army during the Salvadoran Civil War (The Center for Justice and Accountability, 2009).

Viewing the conflict in El Salvador as a Cold War struggle, the Reagan Administration funneled extensive military aid to the Salvadoran government, which included training Salvadoran soldiers in the School of the Americas (The Center for Justice and Accountability, 2009). During the war, right-wing paramilitary squads executed horrendous human rights violations against both leftists and innocent civilians, including "torture, mutilation, forced disappearances, extrajudicial killing and mass rape" (The Center for Justice and Accountability, 2009). Despite these politically-motivated atrocities, the U.S., having framed the Salvadoran Civil War as an economically-motivated battle, considered the roughly 465,000 Salvadorans who fled to the U.S. by 1990 to have immigrated for economic reasons, and therefore did not consider them refugees (Hernandez, 2016, p. 12). U.S. Immigration and Naturalization Service (INS) statistics have proven that Salvadorans entering the U.S. in the 1980's did in fact immigrate due to political violence (Stanley, 1987, p. 135). INS data notes spikes in the number of Salvadorans apprehended at the U.S.-Mexico border from 1979-1981 and 1983-1984, which coincide with increases in political murder in El Salvador (Stanley, 1987, p. 135).

In the 1980's, religious, political, and legal advocates in the U.S. argued that by refusing to recognize Salvadoran immigrants as political refugees, the U.S. government was in violation of the 1980 Refugee Act and international law (Coutin, 2007, 50). In response, these advocates

founded the Sanctuary Movement to house Salvadoran refugees in churches and help them secure legal status by suing the U.S. government, proposing legislation that would qualify Salvadorans as refugees, and seeking administrative action to stall deportation orders (Coutin, 2007, pp. 50-51). These efforts led to the successful passage of a number of acts and in the early 1990's. First, the 1990 Immigration Act allowed the Attorney General to apply Temporary Protective Status (TPS) to nationals of specific countries, and Salvadorans were the inaugural group to receive this protection (Bailey et al., 2002, p. 129). In addition, Salvadorans were granted the ability to apply for Deferred Enforced Departure (DED), which allowed them temporary work and residency privileges (Bailey et al., 2002, p. 129). Further, in 1990, the class-action lawsuit, *American Baptist Churches et. al. v. Thornburgh*, was settled, condemning U.S. government's asylum discrimination against Salvadorans and reinforcing Salvadorans rights to temporary residence and work permissions (Bailey et al., 2002, p. 129).

Despite these temporary victories, the U.S. government also passed a number of acts intended to limit relief for and criminalize Central American refugees during the 1980's and 1990's. César Cuauhtémoc García Hernández has situated this sequence of laws and its effects within the convergence of immigration law and criminal law for the ways in which it promotes a racialized, criminal view of immigrants from Central America (2014, p. 1356). For this convergence, García Hernández conceptualizes this sequence of laws as "crimmigration" law (2013, 1458). For example, the Anti Drug Abuse Act of 1988 ruled that all non-citizens convicted of aggravated felony would be deported, and the 1996 Antiterrorism Effective Death Penalty Act (AEDPA) further broadened the scope of deportable crimes (García Hernández, 2013, p. 1468; Coutin, 2005, p. 14). In addition, the Illegal Immigration Reform and

Immigration Responsibility Act of 1996 (IIRIRA) allocated more resources towards criminalizing immigrants by significantly enhancing law enforcement's presence at the border to catch illegal immigrants shortly after entering the U.S. (Coutin, 2005, 14). Despite the U.S.'s considerable efforts to brand Central American immigrants as criminals, the overwhelming majority of Central American deportees have never been convicted of a crime (U.S. Immigration and Customs Enforcement, 2013). However, these immigrants still face criminalization de facto through the "crimmigration" convergence applied to them by U.S. law enforcement.

The U.S. government's actions to broaden the scope of deportable crimes and allocate more resources towards detecting them has conflated immigration with criminal activity and, as in the case of Salvadorans, placed both immigrants and deportees in a vulnerable position. In the late 1990s to early 2000's, the Salvadoran government and society began to adopt U.S. constructs of the criminal deportee, which singles out deportees as a social problem (Hernandez, 2016, p. 3). Since the U.S. government cast Salvadoran immigrants as criminals deserving of deportation, the Salvadoran government likewise viewed incoming deportees as criminals. Much of this sentiment stems from the mass deportation of about 4,000 gang-affiliated Salvadorans from Los Angeles in the 1990's (Martínez, 2016, location 164). Although only a miniscule percentage of Salvadoran immigrants have criminal histories, and an even smaller percentage have ties to organized crime, the U.S. has used this mass deportation to fuel criminalized views of Salvadoran immigrants, while El Salvador has construed this event as evidence that deportees from the U.S. are responsible for the country's problems, such as rising homicide rates and gang violence (Zillberg, 2007, p. 69).

Despite El Salvador's criminalized view of those who immigrated to the U.S. and returned as deportees, the Salvadoran government took significant action in the 1990's to encourage Salvadorans to continue immigrating to the U.S. for economic purposes. After recognizing the positive economic impact of remittances sent from refugees in the U.S. to their families in El Salvador during the 1980's-1990's (remittances made up around 10% of El Salvador's GDP by the early 1990's), the Salvadoran government oriented its law and policy to encourage Salvadorans to immigrate to the United States, seek stable employment, and support the Salvadoran economy (Gammage, 2006, p. 80). For example, after the U.S. passed the 1997 Nicaraguan Adjustment and Central American Relief Act (NACARA), which renewed suspension eligibility for Salvadorans seeking political asylum, the Salvadoran government aided and encouraged Salvadorans to seek political asylum in the U.S. and secure legal status to generate remittance money (Bailey et al., 2002, p. 129). The Salvadoran government also lobbied the U.S. government to secure Temporary Protective Status (TPS) for Salvadorans to keep them in the U.S. (Coutin, 2007, p. 93). Likely due in part to the Salvadoran government's influence, the George W. Bush administration reinstated TPS status for Salvadoran refugees fleeing severely damaging earthquakes in El Salvador up until the 9/11 attack on New York City in 2001 (Bailey et al., p. 129).

After 9/11, the U.S. government passed the Enhanced Border Security and Visa Entry Reform Act of 2002, which made the requirements for travel, entry documents, and visa applications far stricter (Velez, 2014, p. 195). In the following year, the U.S. government dissolved the Immigration and Naturalization Service (INS) and vastly expanded the departmental infrastructure for immigration policing and detention (Velez, 2014, p. 195). The

George W. Bush administration founded the Department of Homeland Security and its three agencies: Customs and Border Control (CBP), Immigration and Customs Enforcement (ICE), and U.S. Citizenship and Immigration Services (USCIS) (Velez, 2014, p. 195). The purpose of these agencies was to expand border security and remove illegal immigrants conceived as criminals, initially to protect the country from terrorist threats, but in practice, also to divert resources to militarize policing of perceived organized crime and drug-related threats (Velez, 2014, pp. 195-197). Between 2001 and 2008, a combination of federal and local law enforcement agencies also launched a series of raids in locations including airports, power plants, personal residences, and commercial businesses in order to selectively apprehend and deport supposed threats to national security, which included many Latin American immigrants (Sampaio, 2014, p. 204). Although no formal labeling identified Latin American immigrants as terrorist threats, the use of anti-terrorist resources and agencies to apprehend, detain, and deport them has conflated this population with terrorists as targets for immigration policing missions meant to spread fear and demonstrate the U.S. government's power over immigrant populations (Sampaio, 2014, pp. 204, 207). Since 2005, the U.S. has also nearly doubled its funding for these immigration policing efforts in order to catch immense numbers of Latin American immigrants and place them in inhumane conditions meant to deter their entry into the country (Velez, 2014, pp. 196-197).

Increasingly militarizing agencies for immigrant policing and detention serves as a form of biopolitical dominance over Central American migrant populations. These agencies exercise dominating power over migrants by punishing them through targeted law enforcement agendas and detention in inhumane facilities, which are intended to deter Central American immigration

in order to protect U.S. society from the perceived association between Central American migrants and organized crime. This biopolitical domination, as exemplified by migrant testimony in Section III, has implications for the lived experience of migrants in the detention stage of transnational migration and long afterwards.

Despite the U.S.'s harsh deterrence strategies, in the last decade, increasing violence in El Salvador and the rest of the Northern Triangle has still led to rapid increases in immigration to the U.S. (Hiskey et al., 2018, p. 430). In response to these influxes, both the Obama and Trump administrations have enacted immigration policies with the purpose of deterring migration from Central America, including "send a message" strategies that detain and deport illegally-entered immigrants as quickly and harshly as possible (Hiskey et al., 2018, p. 430). These strategies include expediting removal for individuals who do not pass their credible fear interviews, prolonged detention, and, beginning in 2016, several high profile ICE raids to catch and detain undocumented immigrants (Hiskey et al., 2018, p. 431). These actions serve to expand the U.S. government's dominating punishment and control over Central American migrants.

Most recently, the Trump Administration's 2019 Public Charge Ruling has further amplified the U.S.'s strategies to target Central American refugees and quicken deportation orders. The ruling withholds legal status from all non-citizens likely at any time to require public benefits, including food stamps, housing, and healthcare (Department of Homeland Security, 2019, p. 41296). The Department of Homeland Security specifically stated that "aliens within the Nation's borders not depend on public resources to meet their needs, but rather rely on their own capabilities and the resources of their families, their sponsors, and private organizations" (2019, p. 41294). The Public Charge Ruling excludes all migrants, who due to

the economic, social, and health-related costs of systemic violence in transnational migration, have exacerbated or newly established needs for public resources. In the case of Central American migrants, the next sections will examine how systemic violence regulates migrants' lived experience throughout transnational migration and produces specialized disability healthcare needs.

Despite the U.S. government's deterrence strategies, studies have demonstrated that even when they are aware of the violence during migration and in the U.S., Central American migrants continue to migrate, taking the chance that the potential violence they will encounter is a preferred alternative to certain death or violent crime back home (Hiskey et al., 2018, p. 430). For this reason, the U.S. immigrant detention system's violent deterrence strategies not only serve as one stage in an interconnected chain of systemic violence, following physical and economic violence in El Salvador and targeted attacks from organized crime while traveling through Mexico, but they are also ineffective in its purpose to stem Central American immigration. For this reason, Central American migrants continue to enter the transnational migration process and endure each interconnected stage of systemic violence.

Systemic Violence in Transnational Migration

Analyzing Salvadoran migrants' testimony as evidence of how each stage of migration from the Northern Triangle, through Mexico, and to the U.S. are linked in a chain of systemic violence demonstrates the ways in which violence produces and influences Central American migrants' lived experience throughout the transnational migration process. In the following section, I will evaluate migrant testimony from Óscar Martínez's investigative works, *The Beast*

(2013) and *A History of Violence* (2016) to demonstrate how systemic violence interconnects the transnational migration process by motivating initial decisions to emigrate from the Northern Triangle and regulating pathways north through Mexico to the U.S. Following this analysis, I will also examine the health effects of violence during transit and use scholarly reports and migrant testimony from “The Flores Exhibits” (2019) to identify the U.S. immigrant detention system as the next stage in the chain of systemic violence.

Salvadoran migrants’ testimonies demonstrate that experiences with both direct, subjective violence and more objective, economic violence drive their initial decisions to enter the transnational migration process. Subjective violence, or clear, visible violence enacted by an identifiable aggressor, occurs in the form of murder and extortion from gangs (Zizek, 2008, p. 1). Objective economic violence, occurs as a form of systemic violence inherent to El Salvador’s socioeconomic structure, where economic vulnerability and poverty leave many Salvadorans unable to afford needed supplies and services (Zizek, 2008, pp. 1, 9). For its production of Salvadorans’ need to embark on the transnational migration process that subjects them to violent, dominating, and exploitative power relationships, violence in El Salvador serves as the first stage in a chain of systemic violence from the Northern Triangle to the U.S.

In many cases, gang violence in El Salvador motivates migrants’ initial flight to the U.S. In El Salvador, a country of about 6 million inhabitants, as many as 50,000 people are directly involved with gangs, while half a million more are economically dependent upon income generated by organized crime (Martínez, 2016, location 72). Much of El Salvador’s organized crime operates through cliques of the Los Angeles-based organizations, La Mara Salvatrucha and Barrio 18 (Martínez, 2016, location 164). As of 2016, the 4,000 gang members deported in the

1990's had expanded to roughly 60,000 members across El Salvador, and as a result, El Salvador's crime rate is now 20 times higher than that in the U.S (Martínez, 2016, location 84). Furthermore, by 2016, El Salvador's murder rate reached 23 people per day, which is even higher than the rate of 16 murders per day during its Civil War (Martínez, 2016, location 139).

In the last year, President Nayib Bukele of El Salvador has taken rapid and forceful action to address the country's surging crime rates and gang violence (Bristol, 2020). El Salvador's crime rates have even garnered international attention, as Human Rights Watch reported that El Salvador had one of the highest homicide rates in the world in 2019 (Bristol, 2020). In an effort to respond to his country's crime rates, President Bukele launched the Territorial Control Plan in 2019, which sought to drastically increase military and local law enforcement resources (Bristol, 2020). However, after the Salvadoran legislature refused to convene to vote on a \$109 million loan to fund the plan, Bukele took rapid and forceful acts against the legislature in an effort to force their approval of the proposal (Bristol, 2020). In February of this year, Bukele agreed to stop pressuring lawmakers to pass his plan due to national and international condemnation for his attempted coercion of legislative officials (Alemán, 2020). The future projections for El Salvador's Territorial Control Plan remain uncertain and the country's violent crime is unlikely to decline.

Much of El Salvador's violent crime is linked to gangs, which are deeply entrenched in every sector of Salvadoran society, including politics. For instance, an interview Oscar Martínez conducted with a former gang member-turned-informant details how Chepe Furia, a powerful, high-ranking member of La Mara Salvatrucha's Hollywood Locos clique, has a close relationship with the City Council in his base city and even arranges meetings in the City Hall

(Martínez, 2016, location 186, 378). Chepe Furia also has a strong influence over national politics, as verified by a 2014 police report stating that he coordinated the transportation of Arena Party voters to the polls (Martínez, 2016, location 402). Thanks in part to Chepe Furia, the Arena Party won that election (Martínez, 2016, location 402).

Studies have also demonstrated that the dominating presence of gangs suppress Salvadoran residents' non-electoral political participation (Córdova, 2019). Gangs have an incentive to prevent, monitor, and punish political participation in the areas they control so that residents cannot report their operations or identities to political or law enforcement officials, who could potentially threaten gangs' survival (Córdova, 2019, p. 202). For this reason, in areas with a heavy gang presence, gang members discourage residents' participation in community organizations and events because they have the potential to bring residents, politicians, and law enforcement officials together (Córdova, 2019, p. 204). Gang members also threaten to kill residents who report their activities in an effort to prevent their interaction with these officials (Córdova, 2019, p. 204). Studies show that these strategies effectively suppress residents' participation in non-electoral activities, but that electoral activity remains relatively stable since voting does not provide the opportunity for residents to report on gang activity (Córdova, 2019, p. 205). However, given the fact that gangs transport preferred parties' voters to the polls, elections are likely to vote in representatives that will turn a blind eye to gangs and enable their operations (Martínez, 2016, location 402). Gangs' controlling influence over political participation could potentially also account for the Salvadoran legislature's refusal to convene to pass President Bukele's loan to crack down on the country's violent crime (Bristol, 2020).

Migrant testimony in Martínez's works affirms that the threat or enactment of gang violence is successful in intimidating Salvadorans and motivating their decisions to immigrate to the U.S. For example, Martínez describes one case in which Barrio 18 targeted an entire family due to the mother's (Doña Silvia) accidental witnessing of a gang-related execution in front of her shop (Martínez, 2013, pp. 70-76). In order to eliminate all witnesses, Barrio 18 murdered Doña Silvia and sent death threats promising to locate and kill her three sons and their families (Martínez, 2013, pp. 70-76). This led Doña Silvia's sons to flee El Salvador for the U.S. in order to escape certain death back home (Martínez, 2013, pp. 70-76). In this case, violent murder of a family member and the threat of death at the hands of gangs drove Doña Silvia's three sons to enter the transnational migration experience.

Oftentimes, gang violence also couples with economic hardship to motivate migration to the U.S. For example, Martínez recounts the story of a Salvadoran migrant named José, whose journey north began after a local gang closed down his bakery and charged him an impossible extortion tax, threatening to kill him if he failed to pay (Martínez, 2013, p. 44). Unable to fulfill the gang's requests, he fled El Salvador for the U.S (Martínez, 2013, p. 44). In this case, like that of many others, both the objective violence of economic vulnerability and subjective, targeted gang violence drove José to enter the transnational migration process to the U.S.

Although José's migration is somewhat economically-motivated, since he immigrated to escape violent punishment for failing to pay an extortion tax that his economic status prevents him from being able to pay, some Salvadorans migrate for more purely economic reasons. The potential opportunity to earn higher wages and send remittances home to support families paralyzed by poverty provides a strong incentive for Salvadorans to immigrate to the U.S. In

fact, a 2014 World Bank report revealed that that year, Central American immigrants sent \$13 billion in remittances back to their families in an effort to pay for food and maintenance, education, house construction and/or repair, and health expenses. (Held, 2017, pp. 75-79). Job scarcity and low wages leave many Central American families unable to cover these expenses, so this economic violence leaves many individuals with seemingly no other choice than to immigrate to the U.S. (Held, 2017, p. 92).

However, due to the systemic nature of violence that pervades every stage of transnational migration, many economically-motivated migrants also experience targeted violence along pathways north through Guatemala and Mexico. The immense poverty of these individuals renders them especially vulnerable to violence from organized crime who regulate migration routes. For example, in 2010, 72 migrants were found murdered at a ranch in Tamaulipas, Mexico because they or their coyotes (migrant trafficking guides) failed to pay taxes to the crime organization, Los Zetas, who controls that region (Martínez, 2016, location 2830-2840). Since passing through Los Zetas' territory is conditional upon coyotes' and migrants' ability to pay the crime organizations' hefty tax, if an individual does not have enough money to pay, then they will not be permitted to continue north and will be murdered, like the migrants in Tamaulipas, if they attempt to continue anyway (Martínez 2016, location 2830-2840).

The testimony from Doña Silvia's sons and José and evaluations of subjective gang violence and objective economic violence demonstrate that experience with violence in El Salvador serves as the first stage in an interconnected chain of systemic violence in transnational migration because it produces the need for migrants to enter this process, thereby initiating the

process's existence. The decision to migrate also enters Salvadorans into the cultural group of Central American migrants, who are united through the collective journey of migration across the Northern Triangle's, Mexico's, and the U.S.'s borders and territories, which subjects them to the dominating and exploitative power relationships of Mexico's organized crime and the U.S.

Violence in El Salvador drives migrants to the next stage of transnational migration where they transgress the Northern Triangle's borders to traverse Mexico's clandestine routes to the U.S. border. These routes are regulated by systemic violence in the form of biopolitical dominance and exploitation from organized crime, who controls the clandestine trafficking routes throughout Mexico with violence in order to ensure the safe passage of narcotrafficking from Colombia. Of the roughly 850 tons of cocaine produced in the Andes each year since 2009, an estimated 90% passes through Central America on its way to the U.S (Martínez, 2016, location 1332-1382). Since Guatemala and Mexico form the only land passages from the Northern Triangle to the U.S., both narcotraffickers and migrant-traffickers must pass through these countries along clandestine routes controlled by organized crime in order to avoid law enforcement's detention. In order to maximize their profits, crime organizations have established a robust, controlling presence over these routes (Martínez, 2016, location 1332-1382).

Crime organizations demonstrate their biopolitical dominance over migrants through violent, targeted and threatened attacks of sexual violence, sex trafficking, kidnapping, torture, extortion, and, as seen in the previously mentioned Tamaulipas massacre, mass murder. These subjective acts of violence serve to maintain organized crime's ability to maximize profits from migrants travelling along their routes. By conceptualizing bringing in less money than taxing and extorting migrants could potentially generate as a threat to organized crime's vital interest to

maximize profits, then organized crime's regulation of migrants' transit experience through violence could be viewed as a form of biopolitical, dominating regulation. Organized crime's use of violence to ensure that migrants recognize its governing authority over migration routes, pay requested taxes, and generate additional profits from extortion payments, controls the migrant population through punishment in order to eliminate the threat of lessened profits.

Martínez's investigative works testify to the vast forms of violence from organized crime that regulate Central American migrants' experience journeying through Mexico. In many cases, this violence specifically targets migrant women and children. In an interview with Martínez, Luis Flores of the UN International Organization for Migration (IOM) reported that "according to the Guatemalan government, it's estimated that eight of every ten Central American migrant women suffer some form of sexual abuse in Mexico. It's six of every ten, according to a study done by Mexico's Chamber of Deputies" (Martínez, 2013, p. 211). The countless violent attacks from organized crime also normalizes violence and contributes to the high rates of sexual violence inflicted by organized crime, fellow migrants, and corrupted law enforcement officials.

In *The Beast*, Martínez notes one case during which a pregnant woman travelling along Mexico's notoriously violent La Arrocera route, which runs between the Mexican-Guatemalan border and the migrant train, La Bestia, was brutally raped by the three men travelling with her, causing her to go into premature labor (Martínez, 2013, p. 153). The men then beat her until she lost consciousness and killed the newborn child (Martínez, 2013, p. 153). Although fellow migrants, rather than organized crime, executed this assault, organized crime's regulation of migratory pathways through sexual violence against migrant women and children normalizes it, allowing such events to occur. The normalization of violence, caused by organized crime's

biopolitical domination over the migrant population, impacts the lived experience of women and children migration by subjecting them to violent attacks and creating a violent, hierarchical social order in which organized crime dominates all migrant populations and male migrants also dominate women and children migrants.

Organized crime also preys upon women and children migrants for its sex trafficking operations, which are a mode of sexual exploitation that generates additional profits for organized crime. Mexican law enforcement's policies regarding sex trafficking reinforce such operations by promising little to no consequences for offenders. In *A History of Violence*, Martínez explains that a man charged with trafficking a woman in southern Mexico could be freed after only two years in jail (Martínez, 2016, location 3125). In addition, Martínez states that "according to the United Nations Office on Drugs and Crime (UNODC), only one of every thirty cases of trafficking in this region ever goes reported" (Martínez, 2016, location 3251). The lack of accountability for sex trafficking offenses fails to diminish its prevalence as a mode for organized crime to maximize profits from migrants passing through its territories because of the relatively low potential consequences and high potential profits.

Crime organizations also maximize profits by kidnapping migrants, torturing them, and charging exorbitant extortion taxes for their release. For example, in *A History of Violence*, Martínez describes the experience of Sonia, a victim of kidnapping and torture by Los Zetas in the Tamaulipas region of northeastern Mexico, which contains crucial routes for narcotrafficking and migration (Martínez, 2016, location 3343-3348). Sonia had been taken hostage by Los Zetas and was released after her family paid ransom, but when Sonia attempted to report the instance to immigration officials, instead of protecting her or initiating an investigation, they returned her

to her traffickers, who burned her with gasoline and beat her to death in punishment for reporting them (Martínez, 2016, location 3343-3348). This horrific event exemplifies how organized crime uses targeted violence against migrants in order to demonstrate their dominating control over the migrant population. First, Los Zetas exerted control over Sonia by kidnapping her and charging extortion to increase profits from her, and second, by violently murdering her for reporting their crimes, Los Zetas demonstrate their absolute and systemic power that leaves no possibility for migrants to pass through Mexico without experiencing violence.

The previous examples serve as systemic violence inherent to the “system,” or process of migration through Mexico, because they create relationships of biopolitical dominance and exploitation between organized crime and Central American migrants and regulate migrants’ experience during transit by trapping them in a journey ridden with inevitable targeted violence from organized crime (and potentially also fellow migrants and corrupted law enforcement officials). This violence also connects the migration process transnationally by funneling migrants through clandestine routes that cross borders and territories from the Northern Triangle through Mexico to deliver them to the U.S. side of the U.S.-Mexico border. As the following sections will detail, systemic violence during transnational migration also incites fear in the migrant population, which leaves a lasting impact on their physical and psychological health and has implications for their experience with systemic violence in U.S. immigrant detention.

Health Effects of Violence and Fear During Migration

Systemic violence drives and regulates every stage of transnational migration: physical and economic violence in El Salvador motivates many migrants’ decision to enter the migration

process; organized crime exerts violent, biopolitical control over migrants travelling along clandestine routes through Mexico in order to maximize profits; and the U.S. immigrant detention system's biopolitical deterrence strategies involve inhumane conditions and failure to provide detained immigrants with needed healthcare services. Navigating a system driven and regulated by violence incites fear and leaves lasting impacts on migrants' physical and psychological health, which have implications for their experience in the U.S. immigrant detention stage of transnational migration.

Systemic violence in transnational migration incites fear in the Central American migrant population and inspires a host of damaging, long-term effects on their physical and psychological health. Even beyond the threat of violence itself, migrants' lack of confidence in law enforcement to properly investigate the inevitable violence committed against them and hold assaulters accountable escalates this fear and its effects. Martínez's interview with Salvadoran forensic investigator, Israel Ticas, exemplifies migrants' just cause to fear violent attacks due to law enforcement's inability to police violent crime (Martínez, 2016, location 1766). In 2012, Ticas served as the sole investigator working to exhume the bodies of hundreds of Salvadorans murdered and dumped into abandoned wells by gangs (Martínez, 2016, location 1766). In 2010, 43 gang members were charged with these murders, but if the bodies were not recovered for use as evidence within two years of the charges, then the charges would be dropped, and all 43 defendants would be released (Martínez, 2016, location 1766). Despite disoperation from the public works department, which withheld and limited much-needed equipment, Ticas managed to recover 703 bodies, including those of men, women, and children; however, incalculable numbers of bodies still needed to be recovered in order to supply sufficient evidence to imprison

the murderers (Martínez, 2016, location 1766). This massive sample of an even larger, incomprehensible number of murders and the exhumation of men, women, and children sends the message to Salvadorans that no one is exempt from the reaches of violence. Every individual must consider that the next body dumped into a well could be their own, especially considering the justice system's failure to hold offenders accountable and prevent violence from recurring.

Although the previous example refers specifically to a case in El Salvador, which could contribute specifically to Salvadoran migrants' fear of violence, law enforcement's inability to prosecute gang-related violence is also prevalent throughout the entire migratory route through Guatemala and Mexico, which grants just cause for fear in the larger Central American migrant population. For example, in *The Beast*, Martínez describes the case of a Guatemalan migrant whose body was found in a cardboard shack in Huixtla, Mexico, after having been raped and strangled to death (Martínez, 2013, 104-105). Despite this atrocity, her rapist and killer will likely go unpunished because no police force was assigned to the area at the time of her murder, so no investigation followed the discovery of her body (Martínez, 2013, 104-105). The lack of police presence and protection for migrants against sexual assault and murder sends a clear message to attackers and victims alike that nothing will stop such crimes from happening. The impact left by this realization is powerful enough to inspire chronic fear and associated health concerns in most if not all Central American migrants.

A 2016 study from the Universidad Nacional Autónoma de México demonstrates that a strong relationship exists between low confidence in law enforcement's ability to protect the people from crime and chronic levels of fear of crime (Grijalva-Eternod & Fernández-Molina, 2017, p. 188). Although this study focused specifically on college-aged students in Mexico, its

logic can still apply, possibly even moreso, to migrant populations that pass through Mexico.

The testimony that Martínez shares in *The Beast* and *A History of Violence* provide just cause for Central American migrants to have little confidence in law enforcement's ability to prevent, investigate, and impose consequences for violence from organized crime, thereby instilling chronic fear in the migrant population. A 2018 study from *The European Journal of Psychology Applied to Legal Context* asserts that there is an observable negative correlation between fear of crime and the subjective well-being of an individual, which signifies that as the fear of crime increases, the well-being of individuals greatly decreases (Alfaro-Beracoechea et al., 2018). This suggests that if an individual faces severe sources of fear, such as in the cases of gang violence, extortion, and murder committed against migrants, then that individual will possess a proportionally low level of subjective well-being likely accompanied by serious physical and psychological health concerns.

Chronic fear can cause debilitating effects on both physical and psychological health. According to the University of Minnesota's Earl E. Bakken Center for Spirituality and Healing, "fear weakens our immune system and can cause cardiovascular damage, gastrointestinal problems such as ulcers and irritable bowel syndrome, and decreased fertility. It can lead to accelerated aging and even premature death" ("Impact of Fear and Anxiety," 2016). Chronic fear can also impair long-term memory, damage the brain's hippocampus, cause difficulty in regulating fear and anxiety, interrupt brain processing and reactivity, and cause diagnosable mental illnesses, including but not limited to chronic fatigue, clinical depression, and Post Traumatic Stress Disorder (PTSD) ("Impact of Fear and Anxiety," 2016).

The severity and long-term nature of these conditions signal that migrants who have experienced systemic violence, fear, and associated health concerns, will continue to be impacted by these concerns throughout the transnational migration process and long after arrival in the U.S. As the next section will evaluate, after entering the U.S. and falling under the jurisdiction of U.S. law, the physical and psychological effects of systemic violence and fear experienced by Central American migrants could qualify them under ADA definitions for disability and grant them a new set of disability protections, which could potentially impact their experience in the next stage in the chain of systemic violence: the U.S. immigrant detention system.

Section Three: Systemic Violence and Disability Protections in Detention

ICE's Intention to Deter Immigration

Systemic violence drives and regulates the entire transnational migration experience from initial decisions to migrate, the journey north through Mexico, and reception in the U.S. The ICE immigrant detention system is the next of transnational migration's many stages in a chain of systemic violence for the ways in which it apprehends and detains Central Americans who cross the U.S.-Mexico border and subjects them to its deterrence strategies of inhumane treatment and inadequate healthcare access. These strategies exercise the U.S. government's biopolitical, dominating control over migrants to produce and maintain harmful experiences inherent to the U.S. immigration detention and processing system.

Before engaging in a deeper analysis of the systemic violence and illegality of detention, it is crucial to first establish that the purpose of ICE immigrant detention system is to deter immigration from Central America. This intention is clear in the U.S. governments' public

statements and law enforcement practices. For instance, in 2014, Secretary of Homeland Security, Jeh Johnson, made a statement on CNN, which reads: “our message to those who are ... contemplating coming here illegally: We will send you back.... People in Central America should see and will see that if they make this journey and spend several thousand dollars to do that, we will send them back and they will have wasted their money” (Hiskey et al., 2018, p. 429). Secretary Johnson’s statement sends a clear message to Central American migrants that the U.S.’s mission is to catch and deport all undocumented immigrants who enter the country. Here, the threat of inescapable deportation is intended to persuade Central American migrants to never embark on the migration process because their efforts, money, and traumatic experiences will only result in forced return to their home country.

Not only has the U.S. government sought to deter immigration by threatening certain deportation in public broadcasts, but it has also oriented its policing of undocumented immigrants and detention practices to deter immigration. For example, the Obama and Trump administrations’ “send a message” strategies discussed in Section II serve this purpose (Hiskey et al., 2018, pp. 430-431). Instituting policies for expedited removals and holding migrants in detention for prolonged periods of time are intended to persuade migrants not to immigrate to the U.S. because sudden deportation will render their efforts, time, and traumatic experiences during transit purposeless (Hiskey et al., 2018, p. 431). Expanding the detention system to hold more immigrants for longer periods of time is also intended to deter immigration, under the assumption that migrants will stop migrating in order to avoid prolonged inhumane treatment (Hiskey et al., 2018, p. 431).

In addition, the American Immigration Council's FOIA documents detail ICE's intent to use family separation as a deterrent to immigration (U.S. Immigration and Customs Enforcement, 2019, p. 344-347). These documents show explicit evidence of ICE's plans to separate parents from children when they lack documentation to prove a family relationship (U.S. Immigration and Customs Enforcement, 2019, p. 346). The documents also indicate ICE's knowledge that smugglers often encourage migrants to destroy identification documents before crossing the border, so their separation plans would effectively separate groups likely to be families (U.S. Immigration and Customs Enforcement, 2019, p. 346). Threatening the trauma of family separation is one of many ways in which ICE attempts to deter immigration through inhumane treatment of migrants.

ICE detention centers' inhumane treatment of migrants and deliberate failure to provide adequate healthcare are deterrence strategies that serve as systemic violence by positioning traumatic experiences in detention centers and inability to advocate for asylum eligibility as inherent to the process of U.S. immigrant reception and processing. These strategies also exert ICE's biopolitical dominance over migrants by regulating the migrant population's experience in the U.S. Immigrant detention practices exert power over migrants by imprisoning them in ICE's custody and punishing them with inhumane treatment and inadequate healthcare, which impedes their ability to advocate for asylum status in courts and leads to quicker and more likely deportations intended to protect U.S. society from those it perceives as threatening criminals. In this way, ICE's deterrence strategies work to reorient the transnational migration process into a

circular, rather than linear process (more or less³), by rounding out travel from the Northern Triangle, through Mexico, to the U.S., to include return to the Northern Triangle, where, despite deterrence strategies' intentions, the cyclical process could quite possibly begin again (Hiskey et al., pp. 441-442).

In the following sections, I will argue that ICE's deterrence strategies serve as forms of systemic violence that violate federal law by exacerbating preexisting health conditions caused by violence and fear and creating new health concerns, which position migrants' experiences with violence, interrupted ability to advocate for themselves in asylum and deportation proceedings, and much more likely deportation orders as experiences inherent to the U.S. system for immigrant reception and processing. I argue that upon entering U.S. territory, migrants' health concerns could qualify under U.S. definitions for disability, which entitles them to the disability health rights to adequate disability-informed healthcare and freedom from discrimination with access to healthcare granted by the Rehabilitation Act of 1973 and the right to due process during asylum and deportation proceedings granted by the Due Process Clause of the Fifth Amendment of the Constitution. ICE's deterrence strategies of inhumane treatment in detention centers and deliberate failure to provide adequate healthcare violate migrants' disability rights, and, for that reason, are in violation of federal law.

In order to demonstrate this, I will first evaluate ICE's biopolitical, dominating, deterrence strategies of inhumane treatment and negligent healthcare as forms of systemic violence meant to deter immigration. I will then argue that ICE's deterrence strategies constitute

³ Wendy Vogt's *Lives in Transit* (2018) provides a thorough discussion of varied and oftentimes non-linear journeys that make up migration; however, this paper focuses on the more generally linear journey from the Northern Triangle to Mexico to the U.S.

violations of federal disability law because the health effects of violence during the transnational migration process could qualify Central American migrants under disability, and for that reason, they are entitled to the disability rights of adequate healthcare, freedom from discrimination when accessing healthcare, and due process during asylum and deportation proceedings. In the following section, I will then use this argument to propose that an account of the systemic violence in transnational migration, the qualification of resulting health concerns as disability, and ICE's biopolitical deterrence strategies' violations of federal disability law, could inform disability activist groups' efforts to provide partial relief from the added trauma of detention for disabled detained immigrants.

Inhumane Treatment and Negligent Healthcare in Detention

ICE's deterrence strategies of inhumane treatment of detained immigrants and negligent healthcare practices serve as forms of systemic violence for their role in subjecting migrants to a power relationship under ICE's violent, dominating, and regulatory control. Initial detention of migrants places them under ICE's dominating control, while inhumane treatment and rights violations sustain ICE's biopolitical regulation of migrants by increasing the likelihood of the court's rejection of asylum applications to facilitate deportation orders. These practices serve as systemic violence by designating inhumane treatment, impeded ability to advocate for asylum status, and near-certain deportation as experiences inherent to the U.S. immigrant detention and processing system.

Migrant testimonies capturing the inhumane treatment in detention showcase the ways in which ICE exercises its violent dominating power over migrants in order to deter immigration.

“The Flores Exhibits” (2019) provide recorded readings of migrant children and young adults’ written testimony capturing their inhumane treatment in detention centers. Multiple testimonies report ICE separating families at the time of apprehension and placing parents, children, and other relatives in separate detention centers (Project Amplify et al., 2019). For example, in “Exhibit 4,” a teenage girl reported herself and her baby being separated from her fiancé, and she noted observing a group of 30 children in her detention center without any family members (Project Amplify et al., 2019). In addition, in “Exhibit 3,” a four-year-old boy reports being separated from his father when the two were apprehended, and he expressed extreme fear from being alone and the uncertainty of whether he will be reunited with his father in the future (Project Amplify et al., 2019). As explained in the beginning of Section III, ICE uses the inhumane separation of family members in order to deter immigration from Central America, with the goal that reports of the trauma of separation will keep migrants from continuing to immigrate to the U.S.

“The Flores Exhibits” also provide testimony for inhumane treatment related to the “ice boxes,” or “hieleras” where ICE places apprehended migrants before transferring them to detention centers (Project Amplify et al., 2019; Riva, 2017, p. 310). In “Exhibit 12,” a 12-year-old girl and her younger brother report being held in an ice box for ten straight hours (Project Amplify et al., 2019). In addition to the extreme discomfort and pain of being held in the freezing cold for long periods of time, many migrants also report falling ill shortly after exposure to freezing cold temperatures. In “Exhibit 8,” a 12-year-old child reported developing a fever after exposure to the cold, while in “Exhibit 33,” a young mother reported that her baby developed a fever and diarrhea shortly after a similar experience (Project Amplify et al., 2019).

ICE deliberately places detained immigrants through the emotional trauma of separation and the psychological torture of freezing temperatures and illness in an effort to deter Central American immigration to avoid experiencing this trauma and torture.

At times, this inhumane treatment also takes the form of physical violence inflicted by detention center guards. For example, in “Exhibit 35,” one migrant reported witnessing ICE guards punch detained immigrants in the stomach and intimidate other detained immigrants with the threat of beatings if they reported the abuse (Project Amplify et al., 2019). This mistreatment serves to deter immigration by physically abusing migrants currently in detention in hopes that migrants will communicate their abuse to relatives and friends still in Central America in order to prevent their decisions to immigrate to the U.S. In addition, abusing migrants and intimidating them into not reporting abuse demonstrates ICE’s dominating power over the migrants in their custody, which sends the message that migrants should not immigrate to the U.S., because if they do, then they will be forced into an inherently violent and traumatic system of detention and abuse.

Numerous reports from human rights organizations and the press also catalogue cases of inhumane treatment and torture in detention that serve to deter immigration by exacerbating preexisting health concerns. For example, Human Rights Watch revealed accounts of pregnant women in detention being shackled to the walls of their detention centers (Velez, 2014, p. 199). Shackling pregnant women to hold them in painful and uncomfortable positions would worsen the pain and discomfort of pregnancy and potentially threaten the health of the unborn baby. This serves as one of ICE’s strategies to deter immigration by framing the U.S. immigration

processing experience as both painful and potentially damaging to vulnerable individuals, such as pregnant women and their unborn children.

Another report records an instance in which detention center guards dragged a man along the ground and mocked him while he screamed in pain from his known broken spine and undiagnosed case of cancer (Velez, 2014, p. 200). This example raises a number of concerns for ICE's inhumane and torturous treatment of detained immigrants and the impact of this abuse on their health. The abuse by the guards likely aggravated the man's broken spine and possibly worsened his cancer symptoms. This abuse also raises a number of concerns for ICE's treatment of chronic illnesses since the man's cancer was undiagnosed at the time of this incident, which suggests that he either did not receive an adequate health screening upon arrival at the detention center or was unable to see a medical professional to discuss his symptoms.

Numerous testimonies provide evidence of ICE's negligence in addressing detained immigrants' health concerns. For instance, a young mother in "Exhibit 33" of "The Flores Exhibits" reported that after exposure to freezing cold temperatures, her baby got sick with a fever and diarrhea, but when she attempted to meet with the on-site doctor, he just gave her unidentified medication, which failed to resolve her baby's symptoms (Project Amplify et al., 2019). A 17-year-old girl in "Exhibit 28" also reported experiencing chronic pain that paralyzed her from the waist down, but when she met with an on-site doctor, he gave her unidentified pills that worsened rather than alleviating her pain (Project Amplify et al., 2019). Many migrants also report not even having the opportunity to meet with on-site doctors and express fear, anxiety, and stress for the health of themselves and those with them (Project Amplify et al., 2019). ICE's mishandling and negligence of detained immigrant's medical concerns serves as an additional

deterrent to Central American immigration by sending the message that attempting to immigrate to the U.S. is not worth the abuse, torture, and health-threatening dangers of detention.

ICE's inhumane treatment of detained immigrants and negligent healthcare not only serve as forms of systemic violence inherent to the experience of detention and meant to deter immigration, but also constitute violations of federal disability law because the health effects of violence during the transnational migration process could qualify Central American migrants under disability, and for that reason, they are entitled to the disability rights of adequate healthcare, freedom from discrimination when accessing healthcare, and due process during asylum and deportation proceedings. In order to build this argument, I will first evaluate how the physical and psychological effects of violence during transnational migration qualify under U.S. definitions of disability. I will then demonstrate how ICE's deterrence strategies violate disabled detained immigrants rights to adequate healthcare, freedom from discrimination, and due process. I will also argue that these violations demonstrate how ICE has designed and maintains its immigration detention and processing system by establishing inhumane treatment, impeded ability to advocate for asylum status, and near-certain deportation as experiences inherent to the experience of passing through that system. In Section IV, I will propose recommended and contested applications for this argument in the legal field.

Disability Qualifications for Immigrants in Detention

All individuals and organizations in U.S. territory are subject to U.S. federal law, and ICE detention centers are no exception. Applying disability health law to the U.S. immigrant detention system is crucial because immigrants qualifying under disability are entitled to the

disability protections of adequate disability-informed healthcare, freedom from discrimination, and due process, as granted by the ADA Amendments Act of 2008, the Rehabilitative Care Act of 1973, and the Due Process Clause of the Fifth Amendment of the U.S. Constitution.

Demonstrating that the physical and psychological effects of violence and trauma during transnational migration qualify as disability per the ADA Amendments Act of 2008 is central to verifying detained Central American migrants' rights to these disability protections.

The Americans with Disabilities Act (ADA) Amendments Act of 2008 outlines the current legal definition of disability in the United States as follows:

“(1) DISABILITY.—The term ‘disability’ means, with respect to an individual—

“(A) a physical or mental impairment that substantially limits one or more major life activities of such individual;

“(B) a record of such an impairment; or

“(C) being regarded as having such an impairment.”

Section 4 of this act clarifies major life activities to include: general activities (“caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working”) and major bodily functions (“functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions”) (ADA Amendments Act of 2008). Additionally, the act elaborates that disability qualifications “shall not apply to impairments that are transitory and minor” (ADA Amendments Act of 2008). For this reason, impairments must be of more notable severity and affect an individual for an extended period of time. The act further explains the scope of

disability qualifications by stating that the impairment of just one major life activity is sufficient for an individual to qualify for disability; conditions that are episodic or in remission still fit the definition of disability if they would limit a major life activity when active; and the ameliorative effects of treatment methods and technological aids do not impede consideration of a condition as a disability (ADA Amendments Act of 2008).

The most obvious conditions resulting from transnational migration that would qualify as disabilities are physical, visually perceptible injuries. For example, La Bestia, the train migrants ride from Arriaga to Ixtepec to Medias Aguas and onwards north through Mexico, has maimed and even killed migrants who fall from the train and get pulled onto the tracks (Martínez, 2016, location 2877). Many of those lucky enough to survive failed attempts to climb aboard La Bestia are left with smashed feet or severed limbs (Martínez, 2013, p. 163). These injuries leave migrants with clearly-perceptible physical disabilities that even medical professionals lacking disability training could identify.

The various forms of systemic violence during transnational migration also have serious consequences for psychological health. Martínez's works reference two cases that affirm the direct relationship between violence and trauma and psychological disability. In *The Beast*, Martínez interviews Olga Isolina Gómez Bargas, who began experiencing severe suicidal thoughts after two of her former husbands were murdered by La Mara Salvatrucha (Martínez, 2013, pp. 90-91). Olga reported thinking, "I'm going to kill myself... I'm going to kill myself and my daughters and my dog, and then we'll have nothing left to fear" (Martínez, 2013, pp. 90-91). In order to escape the threat of death from gang members or herself, Olga decided to migrate north, but her fear and its psychological effects will accompany her for years to come

(Martínez, 2013, pp. 90-91). Olga's testimony emphasizes that grief from the violent murders of loved ones and chronic fear of future violence can cause mental decline and suicidal thoughts. Thoughts of death or suicide are cited by the National Institute of Mental Health (NIMH) as one of the signs and symptoms to identify clinical depression (NIMH, 2018 b). NIMH also explains that "major life changes, trauma, or stress" can contribute to the development of depression's symptoms and eventual diagnosis (NIMH, 2018 b). This suggests that Olga's chronic fear and trauma caused her suicidal thoughts and depression and that the further trauma of displacement from migration will likely worsen her condition.

This case illustrates a direct link between fear from gang violence and depression, a psychological disability protected under the ADA Amendments Act of 2008. Clinical depression poses significant limitations to major life activities by causing difficulty sleeping and eating, serious gastrointestinal issues, chronic headaches, and damaged neurological function (NIMH, 2018 b). Due to these effects, depression is one of several chronic disorders that qualify under the ADA's definition of disability. For this reason, migrants proven to exhibit symptoms of depression in a psychological evaluation would qualify as having a disability protected under U.S. disability health law.

In *A History of Violence*, Martínez also shares the testimony of Salvadoran migrant, Grecia, who testified before the Ninth Circuit Peace Court of San Salvador in 2010 and received multiple psychological evaluations directly linking the effects of her abuse to psychological disability (Martínez 2016, location 3139). Grecia reports that during the migration process, she escaped from a relative who attempted to rape her, was kidnapped and sold back to him, was kidnapped again by Los Zetas, was held captive in safe houses where she witnessed repeated

beatings and rapes of others, and was forced in to sex slavery, beatings, rape, branding, and the consumption of dangerous drugs (Martínez, 2016, location 3208-3213, 3320-3326).

Grecia received multiple psychological evaluations to examine the enduring effects of the trauma and violence she had experienced. Her first psychological evaluation filed by Mexico City's Special Prosecutor's Office for Violence Against Women and Human Trafficking (FEVIMTRA), expressed that she was "depressed, mistrustful and unable to cry" (Martínez, 2016, location 3436). A second evaluation by the Institute of Forensic Medicine in El Salvador concluded that she "cannot sleep at night, she registers any sound as gunshots, she goes two or three days without eating, whenever she lights a fire she remembers [a murdered fellow migrant], her libido is nonexistent, she pushes her partner away when they have relations" (Martínez, 2016, location 3441). The assessment's conclusions identify Grecia's emotional state as depressive and anxious, her general orientation as indicative of having lost segments of memory, and her psychological state as neurotic (Martínez, 2016, location 3441-3447).

Nearly all of Grecia's symptoms correlate to those cited in the ADA's definition of disability as limiting major life activities and major bodily functions. Depression, for reasons previously explained, qualifies as a psychological disability protected by the ADA Amendments Act of 2008. Grecia's FEVIMTRA psychological evaluation also describes her emotional state as anxious, and, if this statement refers to one of several anxiety disorders (Generalized Anxiety Disorder, Panic Disorder, or a Phobia-related Disorder), then this provides further evidence that she would qualify under the ADA's definition of disability (NIMH, 2018 a). According to NIMH, anxiety disorders can pose a number of cognitive symptoms, cause serious difficulty with sleep, complicate function of the heart and other vital organs, which all pose serious limitations

to major life activities and major bodily functions (NIMH, 2018 a). Furthermore, the ADA Amendments Act of 2008 cites Grecia's symptoms of difficulty eating, difficulty sleeping, and loss of memory as symptoms that limit major life activities and indicate disability. The combination of these symptoms, verified by professional psychological evaluations, provides robust evidence for Grecia's qualification under disability status if she were to enter the U.S.

Both Olga and Grecia's testimonies draw a direct relationship between violence experienced during different stages of the transnational migration process and severe psychological effects qualifying under ADA definitions of disability. Since the various forms of systemic violence are inherent to the transnational migration process, no Central American migrant can pass through this process free from the influence of violence. This suggests that all Central American migrants could potentially also qualify for disability. Once these migrants reach the U.S. and enter ICE's custody, they should be legally entitled to the disability protections of adequate healthcare, freedom from discrimination, and due process during asylum proceedings. As the next section will evaluate, ICE deterrence strategies of inhumane treatment and deliberate failure to provide adequate healthcare violate Central American migrants' disability rights and serve as forms of biopolitical systemic violence.

Violations of Federal Disability, Discrimination, and Due Process Law

ICE's inhumane treatment of detained immigrants and negligent healthcare practices not only serve as a deterrence strategy to immigration, but, under the assumption that most Central American migrants could qualify for disability, are also in violation of disabled migrants' rights to adequate disability-informed healthcare, freedom from discrimination in accessing that care,

and due process during asylum and deportation proceedings. These rights violations form part of the U.S.'s immigration reception and processing stage of systemic violence in transnational migration by allowing the U.S. to exert its dominating biopolitical control over Central American migrants, exacerbating their health concerns to increase the likelihood that courts will reject asylum applications and facilitate deportation orders, and designating inhumane treatment, impeded ability to advocate for asylum, and near-certain deportation as experiences inherent to this stage of transnational migration.

Current ICE detention center conditions and healthcare practices routinely violate detained immigrants' disability rights to adequate disability-informed healthcare and freedom from discrimination granted by the Rehabilitation Act of 1973, and due process during asylum and deportation proceedings granted by the Due Process Clause of the Fifth Amendment of the Constitution. These violations are present in ICE's infrastructure for detainee healthcare, inhumane treatment of immigrants in detention, and the broader biopolitical agenda situated around the immigrant detention system. Evaluating these systemically violent violations has implications for Central American migrants' experience in the U.S. immigrant processing stage of transnational migration because it provides legal justifications to release disabled detained immigrants, which might help their chances of receiving asylum status and remaining in the U.S.

All detained immigrants with disabilities are entitled to adequate disability informed-healthcare and freedom from discrimination granted by the Rehabilitation Act of 1973. Section 504, of the Rehabilitation Act of 1973 states that:

“No otherwise qualified individual with a disability in the United States, as defined in section 705 (20) of this title, shall, solely by reason of his or her disability, be excluded

from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service.”

Section 504 also clarifies that a “program or activity” includes corporations, partnerships, and private organizations who receive federal financial assistance and/or are “principally engaged in the business of providing education, health care, housing, social services, or parks and recreation” (Section 504, Rehabilitation Act of 1973). Since ICE’s detention centers include both ICE-run and private facilities that receive federal funding from the Department of Homeland Security’s annual budget to house and provide healthcare to detained immigrants, disability healthcare protections from the Rehabilitation Act of 1973 apply to these facilities (Ochoa et al, 2010, p. 392). This means that, despite ICE’s intention to deter immigration through trauma and abuse, ICE cannot legally deny disabled detainees specialized medical care nor discriminate between disabled and nondisabled detainees for healthcare access.

Both the current infrastructure for detainee healthcare and inhumane conditions and treatment in ICE detention centers violate disabled detained immigrants’ rights to adequate healthcare and freedom from discrimination. Two branches within the U.S. Department of Homeland Security: Immigration and Customs Enforcement (ICE) and the Department of Immigrant Health Services (DIHS), share responsibility for establishing detainee healthcare guidelines in the DIHS Medical Dental Detainee Covered Services Package (Venters & Keller, 2009, p. 951). Currently, these guidelines are not legally enforceable by federal law, and given ICE’s purpose of deterring immigration, all administration, oversight, and enforcement of

detainee healthcare is likely to violate the DIHS written healthcare protocols (Venters & Keller, 2009, p. 951).

The DIHS mandates that all detention centers provide initial medical screenings to detainees upon arrival and physical screenings within two weeks of detention. Each detention center must also have a sick call system so that detainees can request to see on-site physicians for medical concerns (Venters & Keller, 2009, p. 952). However, in an examination of the sick call wait-times in three detention facilities, the DHS Office of Inspector General (OIG) found that one third to one half of all sick call requests were not responded to in an adequate amount of time (Venters et al., 2009, p. 480). This instance demonstrates one of many ways in which ICE does not comply with DIHS guidelines to ensure proper healthcare, likely due to its agenda to mistreat detained immigrants to deter future immigration.

In addition, per the DIHS Covered Services Package, detainees seeking medical care beyond what generalized, on-site providers can offer, such as consultations with specialists and diagnostic tests, must obtain prior approval from DIHS before they can have access to that care (Venters & Keller, 2009, p. 952). Detainees may only seek care from outside providers in cases of sudden emergency, which the DIHS defines as “a condition that is threatening to life, limb, hearing or sight”; however, psychological disabilities, despite potentially threatening life through symptoms that interrupt major life functions and activities, may not present obvious, visually perceptible threats to “life, limb, hearing or sight” (Venters & Keller, 2009, p. 952). For this reason, DIHS policy for emergency care discriminates against psychologically disabled detainees by denying them needed medical care for disabilities that fall outside of DIHS definitions for emergency health needs. Furthermore, the DIHS Covered Services Package specifies that pre-

existing conditions do not justify emergency care (Venters & Keller, 2009, p. 953). This signifies that detainees may receive medical treatment for immediate injuries, such as a sudden heart-attack or stroke, but for chronic health conditions that arose during the transnational migration process, detainees may have to go untreated until their illnesses pose serious enough threats as to warrant sudden emergency intervention.

The DIHS Covered Services Package also states that “other medical conditions which the physician believes, if left untreated during the period of ICE/BP custody, would cause deterioration of the detainee’s health or uncontrolled suffering affecting his/her deportation status will be assessed and evaluated for care” (Venters & Keller, 2009, p. 952). Since ICE’s intent is to use inhumane treatment and poor healthcare to interfere with asylum and deportation proceedings, ICE’s on-site healthcare professional will likely incorrectly assess chronic medical concerns. The Covered Services package also includes a 35-page list of approved care for surgical and organ-system care, but only devotes half a page to describe “other services,” including chronic illnesses and psychological disabilities, whose severity must be determined by on-site providers (Venters & Keller, 2009, p. 953). However, as described in the previous paragraph, by requiring detainees in need of specialized medical care to seek treatment from outside providers, the DIHS Covered Services Package concedes that its on-site care providers have only generalized knowledge (Venters & Keller, 2009, p. 952). For this reason, many disabled detainees likely will not receive needed care because, before obtaining access to specialized care, they must be “assessed and evaluated” by unqualified on-site providers whose purpose is deny needed healthcare in order to enhance the likelihood of asylum applications’ denial (Venters & Keller, 2009, p. 952).

ICE's deterrence strategies of deliberately failing to provide adequate healthcare violates the Rehabilitative Care Act of 1973 by providing detained immigrants with a healthcare system that intentionally fails to provide access to needed healthcare. ICE's detainee healthcare system also violates disabled detainees' freedom from discrimination included in the Rehabilitative Care Act of 1973 by making unqualified on-site providers with ulterior motives responsible for identifying disability and granting access to specialized healthcare. Due to on-site providers' lack of expertise with disability and their purpose in subjecting detained immigrants to inhumane treatment, detainees with minor non-disabling or only physically-disabling symptoms might receive the basic care they need, while detainees with chronic illnesses and psychological disabilities will be denied needed, specialized care.

ICE's inhumane treatment of detained immigrants also violates the Rehabilitative Care Act of 1973 because this treatment causes the opposite of proper disability healthcare to occur by instead exacerbating disability and even causing new health concerns. For example, the previously mentioned report on ICE guards dragging a man with a broken spine and cancer testifies to ICE's role in worsening health concerns (Velez, 2014, p. 200). In addition, testimonies of detained immigrants being beaten by guards in "The Flores Exhibits" and scholarly reports exemplifies ICE's abuse, which could cause new injuries or other health concerns. Since this abuse serves as a form of violence inherent to detained immigrants' experience in detention that violates disabled detained immigrants' right to proper healthcare and treatment, ICE's detention system is in violation of the Rehabilitation Act of 1973.

The neglectful state of detainee healthcare also threatens detained immigrants with psychological disabilities. One study from the Bellevue/NYU Program for Survivors of Torture

and the Physicians for Human Rights found symptoms indicative of depression in 86% of interviewed detainees, anxiety in 77%, and PTSD in 50% (Venters et al., 2009, p. 476). The study also concluded that detainees' mental health worsened significantly the longer they were in detention (Venters et al., 2009, p. 476). The study's findings emphasize the staggering quantity of detained immigrants needing specialized psychological healthcare that detention centers deliberately fail to provide. This data also exemplifies that, in accordance with ICE's intentions, psychological health needs are exacerbated during detention, rather than properly addressed.

The Bellevue/NYU Program for Survivors of Torture and the Physicians for Human Rights also published a report noting instances in which detention centers segregated detainees with mental illnesses from other detainees (Venters et al., 2009, p. 487). The threat of segregation limits detainees' access to psychological healthcare by disincentivizing them from seeking help out of fear of separation from the larger body of detainees. The report also proposes that there is a correlation between high levels of mental illness in detainees and ICE's frequent use of segregation (Venters et al., 2009, p. 487). Separation from the outside world is integral to organized crime operations, such as sex trafficking and ransom kidnappings. Since many Central American migrants have endured or been influenced by these traumatic experiences and their resulting psychological health effects, segregating psychologically disabled Central American detainees forces them to relive past trauma. For this reason segregating immigrants with psychological disabilities could severely worsen their mental health. Segregating detained immigrants with psychological disabilities is another of ICE's strategies to deter immigration, since many migrants' could have severe psychological health concerns

resulting from past traumatic experiences, such as sexual assault and kidnappings, and avoiding reliving past trauma could serve as a considerable deterrent to immigration.

As demonstrated by these examples, the ICE immigrant detention system is in violation of the Rehabilitation Act of 1973 for its inhumane treatment of detained immigrants, deliberate failure to address detained immigrants' disability health needs, and discrimination against psychologically disabled detainees for access to specialized care. These violations not only exemplify ICE's violent deterrence strategies, but, as the following paragraphs will detail, also contribute to ICE's systemically violent biopolitical regulation of Central American migrants by impeding their rights to due process during asylum and deportation proceedings and, therefore, making deportation evaluations quicker and more likely.

The Due Process Clause of the 5th Amendment of the U.S. Constitution states that "no person shall...be deprived of life, liberty, or property, without due process of law," and the Supreme Court Case, *Bridges v. Wixon* (1945), established that the Due Process Clause applies to deportation proceedings because of the crucial life-altering interests at stake (U.S. Congress, n.d.; Ochoa, 2010, pp. 393-394). Especially considering that Salvadoran deportees, in particular, face targeted gang violence in El Salvador, ensuring that Salvadoran immigrants have fair asylum proceedings could be a matter of life or death (Bristol, 2020). Since immigrants in deportation proceedings have the right to due process, and the Due Process Clause states that no one shall be deprived of life, disabled detained immigrants have the legal right to adequate healthcare that helps preserve their lives by treating or accommodating their disabilities and promoting fairness during immigration proceedings.

In addition, Section 240 (b)(3) of the Immigration and Nationality Act works to reinforce detained immigrants' due process rights by "[instructing] the Attorney General to 'prescribe safeguards to protect the rights and privileges' of respondents who are not 'present' by reason of mental incompetence" (Ochoa, 2010, p. 395). These safeguards meant to improve basic fairness could arguably include adequate healthcare for detained immigrants with psychological disabilities. Under this interpretation, Section 240 (b)(3) would suggest that ICE has the legal obligation to protect psychologically disabled detained immigrants' right to adequate medical care. Despite this legal responsibility, ICE continues to fail to provide adequate disability healthcare to detained immigrants in tune with its intention to deter immigration.

Violating due process contributes directly to ICE's biopolitical regulation of Central American migrants that helps prevent their legal entry into the U.S. due to the government's misperception of this population as threatening criminals. ICE's inhumane treatment of detained immigrants and inadequate healthcare interferes with due process during asylum and deportation proceedings because failing to provide adequate medical care perpetuates and, in some cases, exacerbates chronic illness and disability. This contributes an additional element of "undesirability" for already racialized and criminalized Latino immigrants by causing them to appear unprepared for or too ill to devote necessary attention to immigration cases. This unjustly increases the likelihood of immigration courts denying asylum requests and initiating removal proceedings in accordance with 2019's new public ward policies, which cast immigrants likely to require state-funded health services as ineligible for asylum (Riva, 2017, p. 315). Untreated or worsened health conditions in detention could cause immigration courts' perception of detainees' potential need for public health services to appear more severe than they truly are, and this

misperception could interfere with courts' fair judgement of asylum applications. Interfering with due process by subjecting Central American migrants to violent punishment in detention centers allows the U.S. to exert its dominating, biopolitical control over Central American migrants. Since violations of due process stem from the inhumane and violent experiences inherent to ICE's immigrant detention system and cause the likely rejection of asylum applications and forced removal inherent to the U.S.' immigrant processing system, ICE's violation of detained immigrants rights to due process maintain and drive the systemic violence in this stage of transnational migration.

This also allows the U.S. to reorient transnational migration into a circular process by returning Central American migrants to the Northern Triangle so that, in an effort to avoid ICE's violent deterrence strategies, these migrants will not reattempt immigration. Scholars, such as Arjun Appadurai, have discussed the perpetual, cyclical motion of refugees' transnational travel, explaining that the policies and conditions of nation-states create a process of perpetual motion where refugees travel from one nation to another, cause new instabilities in their anticipated destination country, as a result, experience more social exits, and then continue on the cyclical process of travel (1996, p. 43). In the case of Central American immigration to the U.S., the violence in the Northern Triangle forces migrant populations into a journey regulated by violence that transgresses borders from the Northern Triangle through Mexico and to the U.S., where large migration flows cause instabilities to which the U.S. government responds with a purposely violent system of detention intended to deter future immigration and speed deportation orders. Deportation pushes migrants back into the cyclical process of transnational migration with return to the Northern Triangle, where, as proven by studies showing that U.S. deterrence strategies do

not effectively prevent Central American immigration, they are likely to begin the transnational migration process again (Hiskey et al., 2018, pp. 441-442).

This stage in the transnational migration process's interconnected chain of systemic violence produces traumatic and abusive experiences for migrants who pass through detention in order to maintain a system intended to deter future immigration. ICE's dominating power and biopolitical control contribute to the systemic violence of transnational migration by designating its deterrence strategies of inhumane treatment and lack of access to adequate healthcare as experiences inherent to the U.S. system for immigration reception and processing. These strategies also violate disabled detained immigrants' rights to adequate healthcare, freedom from discrimination when accessing healthcare, and due process during asylum and deportation proceedings. For that reason, legal justifications exist to file a class action lawsuit against ICE and advocate for the immediate release of disabled detained immigrants. The possible affirmative ruling and enforcement of such a case could potentially provide Central American migrants' with partial relief from the added trauma of detention while they pass through the U.S. immigrant processing stage of the transnational migration process. The following section will discuss the logistics and practical considerations of filing this case and enforcing its ruling.

Section Four: Necessary Action and Practical Considerations

Disability Activism: A Class Action Lawsuit

The aforementioned Latin American cultural studies account of the systemic violence in transnational migration, the qualification of health effects resulting from violence as disability, and ICE's violations of federal disability law through its deterrence strategies of inhumane

treatment of detained immigrants and inadequate healthcare services could inform disability rights organizations' efforts to advocate for disabled detained immigrants by putting forth legal justifications for a class action lawsuit against ICE. Filing this lawsuit could help transition disability rights organizations' efforts from health advocacy to health activism and potentially provide them with legal leverage to push for the release of all disabled detained immigrants.

Currently, disability rights organizations, such as the National Disability Rights Network's (NDRN) Protection and Advocacy Groups (P&A), have limited their efforts related to disabled detained immigrants to health advocacy, which emphasizes education and works within the existing system (National Disability Rights Network, 2019; Smith, 2019; Zoller, 2005, p. 344). For instance, the P&A Group, Disability Rights Texas, inspected detention centers in 2018 to investigate whether disabled children housed there were receiving proper care (National Disability Rights Network, 2019; Smith, 2019). Disability Rights Florida and Disability Rights California have conducted similar evaluations and published informative reports on their findings, but these actions solely serve the purpose of increasing awareness for the inhumane conditions in detention and work within the existing system of ICE detention (Smith, 2019).

By using the argument provided by this paper and its privileges to enter detention centers to gather plaintiffs, P&A Groups could file a class-action lawsuit⁴ against ICE and request the immediate release of all disabled immigrants from detention as recompense for their rights violations. The numerous disabled detained immigrants' whose testimonies P&A Groups collect would serve as the plaintiffs, while the NDRN would serve as the singular party representing them. Filing this lawsuit would transition P&A Groups' efforts to the more concrete action of

⁴ A class action lawsuit is a case with multiple plaintiffs affected by the same alleged wrong, who are represented by a singular party (OED Online, 2020).

health activism, which challenges the existing system (ICE immigrant detention system) and the power dynamics (biopolitical control exerted through systemic violence) that negatively impact disabled detained immigrants' health (Zoller, 2005, p. 344).

The hopeful approval and enforcement of this case could potentially secure the release of all disabled detained immigrants and provide them with partial relief from the added trauma of detention. The hopeful affirmative ruling and enforcement of this lawsuit could possibly also provide legal precedent for a future case advocating for the release of all detained immigrants on the basis of inhumane treatment, violated health rights, and impeded due process. Releasing disabled detained immigrants would free them from ICE's inhumane treatment and inadequate healthcare that exacerbates their preexisting health concerns and causes new ones. Release would also provide them with the opportunity to search for healthcare services beyond those in detention centers tasked with deterring them through inhumane treatment. There is no guarantee that these services would provide the level of specialized care that Central American migrants' health concerns require, but would at least give them the opportunity to seek services intended to help, rather than to punish and deter. In the following section, I will discuss the various practical considerations of filing the proposed lawsuit and implementing its ruling.

Practical Considerations and Relation to Broader Debates

The practical application of this case is up for debate due to reforms and permissions that would be necessary to gather plaintiffs for the case, the questionable likelihood of the case's anticipated affirmative ruling's enforcement, and its position in humanitarian debates. First, in order to serve as plaintiffs for the case and/or qualify for release after the case's ruling, detained

immigrants would require disability-informed health screenings to verify symptoms of disability at their detention centers. According to the ADA, disability protections apply on an individual, rather than collective basis, so, although numerous Central American migrants could potentially qualify under disability for their similar or shared experience with violence and trauma in transnational migration, each individual would need a physical and psychological health evaluation upon arrival at detention centers to diagnose their disabilities (ADA Amendments Act of 2008). As discussed in Section III, medical personnel in detention centers lack the specialized knowledge to accurately identify disability. For this reason, P&A Groups would need to push for reform to ICE's healthcare infrastructure to require disability training for all medical personnel conducting health screenings. If this reform was effectively implemented, disabled detained immigrants could verify their disabilities, serve as plaintiffs in the class action lawsuit, and qualify for release from detention, pending an affirmative and enforceable ruling from the court.

Another potential barrier to qualifying detained immigrants for disability would be if, due to society's stigmatizing view of disability and the U.S. government's new Public Charge Ruling, immigrants do not consent to diagnosis. Disability is one of many minority identities that faces stigmatization by the U.S. society and government. Stigma occurs when societies or institutions with superior social, political, or economic power negatively label, stereotype, or discriminate against individuals with a characteristic deemed undesirable (Whittle et al., 2017, p. 182). Stigma can manifest physically as enacted hostility or discrimination, as well as structurally as societal or political structures and institutions that limit opportunities and wellbeing of stigmatized individuals (Whittle et al., 2017, p. 182). For example, studies focused on disabled individuals' experiences with stigmatization have shown that members of society often avoid

them as undesirable company, view them as lazy for receiving or potentially receiving public benefits, and sometimes even physically harm them (Whittle et al., 2017, pp. 185-186). In order to avoid hostile and discriminatory treatment by U.S. society and the U.S. government during their asylum proceedings, detained immigrants may feel averse to diagnosis that would associate them with this stigmatized category.

In addition, the disability activist movement is inspired by, led by, and associated with members of other stigmatized identities, such as minority racial, sexual orientation/identity, and gender groups (Schalk, 2013). Some immigrants may fear that disability diagnoses will associate them with these other stigmatized identities and compound with the already gendered, racialized, sexualized, and criminalized views imposed upon them by the U.S. government and society (Riva, 2017). Immigrants may also fear that qualification with disability will negatively impact their asylum proceedings if the U.S. government associates their disability with a potential need for public health resources in violation of the 2019 Public Charge Ruling (Department of Homeland Security, 2019, pp. 41294-41296).

Each of these potential negative, stigmatizing consequences of disability diagnosis are valid concerns; however, the exacerbating effects of detention on immigrants' health could potentially interfere just as much if not more so to the rejection of immigrants' asylum applications. Release from detention would avoid the exacerbating effects of detention and possibly allow immigrants to demonstrate their ability to use personally-funded or nonprofit health services, rather than federally-funded services, to meet disability health needs. For this reason, although many immigrants may decline to receive a disability diagnosis, that diagnosis

could potentially strengthen their argument for asylum eligibility and would allow them partial relief from the added trauma of detention while they await court decisions.

Another practical consideration regarding the proposed class action lawsuit is the questionable enforcement of its anticipated affirmative ruling. This question is due in part to the notable difference between the law as written and the law as practiced regarding rights claims. This stems from the fact that rights hold little enforceable weight because rights language is variable, subjective, and requires interpretation (McCann, 2013, p. 248). For this reason, when rights claims enter the legal sphere, they are often met with opposing interpretations fitting the contested institution's social values (McCann, 2013, p. 249). In the case of the previously proposed lawsuit, if P&A groups bring forth the argument that ICE is in violation of disabled detained immigrants' disability health rights and that ICE is legally obligated to release them from detention, ICE could counter by arguing that it has the legal obligation to place all incoming Central American immigrants in detention in order to protect national security, since the U.S. government perceives this group as threatening criminals that it must control through punishment in the detention system. Although disabled detained immigrants have rights rooted in interpretation of the law's written language, lack of enforcement strips these rights of their functional significance. In this sense, the distance between legal rights as written and as enforced serves as violence inherent to the legal system, which claims to protect victimized individuals, but, instead, consistently allows violence to continue due to lack of enforcement.

A considerable distance between the law as written and as practiced also exists as characteristic of the broader field of law. For example, in domestic violence cases, battered women's movements have historically attempted to enforce women's right to freedom from

abuse by advocating for stricter laws, policing, prosecution, and consequences for abuse (Merry, 2001, pp. 50-51). Some of these efforts have even led to the passage of laws, such as The Violence Against Women's Act (VAWA) in 1994, intended to better enforce women's right to not be beaten (Lazarus-Black & Merry, 2003, p. 932). However, studies have shown that changing the laws as written has not resulted in functional enforcement of women's rights because many accused abusers fail to appear in court and persuade victims to drop the charges, while the courts sometimes fail to impose sentences and when they do, the courts often only impose minimal fine-based punishments, fail to impose consequences when abusers break the conditions of their sentence, and encourage marriages to stay intact, which keeps women in abusive environments (Merry, 2001, pp. 45, 59; Merry, 2002, pp. 82, 90-91). Even international laws, such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which was intended to minimize violence against women in 170 countries, lacks an agent to enforce signing countries' compliance (Lazarus-Black & Merry, 2003, pp. 934-935). Even though both domestic and international law have expanded legal language to promote women's rights, the significant distance between the laws as written and as enforced leave women's rights functionally nonexistent and therefore, enables the continuance of potentially life-threatening violence. Although domestic violence and immigration proceedings involve different legal contexts, the principle of the characteristic distance between the law as written and as practiced and its enabling of violence applies equally to both contexts and the broader field of law.

In addition, as legal precedence amasses over the years, dominant groups (in this case, the U.S. government and ICE) tend to limit rights claims to maintain the status quo established by past similar cases (McCann, 2013, 249). Taking past legal precedent into consideration, even

if U.S. federal courts found ICE guilty of disability rights violations and ordered disabled detained immigrants' release, ICE might not comply with the ruling in accordance with its past actions during the Guantanamo Bay cases of the 2000's. In these cases, the Supreme Court repeatedly found the U.S. government guilty of violating detainees' rights to habeas corpus, or freedom from unlawful detention or imprisonment (The Lawfare Institute, n.d.). In an effort to avoid obligations to ensure detainees' rights to habeas corpus, the U.S. government followed each case by passing new laws to contest jurisdiction and nullify the Supreme Court's rulings (The Lawfare Institute, n.d.). Even if the proposed lawsuit in this case resulted in an affirmative ruling and required the U.S. government to release disabled detained immigrants, the U.S. government could follow the Guantanamo Bay cases' precedent by contesting the Supreme Court's jurisdiction and maintaining its inhumane detention system in the alleged name of national security. For this reason, even if U.S. courts confirm the U.S. immigrant detention system's illegality, its rulings may go unenforced.

ICE's expected noncompliance with court rulings would also be consistent with the immigration enforcement regime's routine distancing between immigration legislation as written and as practiced (Valdez et al., 2017, p. 550). Scholars have referred to the everyday immigration policing that strays from explicit legal language by those who do not write the law, but who are tasked with enforcing it as the "paralegal" (Valdez et al., 2017, p. 552). After the 9/11 attack, immigration policing took a much more expansive interpretation of immigration law, which often delved into paralegal actions (Valdez et al., 2017, p. 554). For instance, despite reforms intended to restrict immigration policing to federal authorities, state and local law enforcement were still permitted to ask individuals about immigration status without probable

cause for suspicion and submit their biometrics to federal databases as long as the individuals were apprehended during regular policing (Valdez et al., 2017, pp. 556-557). The immigration enforcement regime also has a history of noncompliance with reforms. Despite legislation that specifies immigration policing for serious criminal offenders, ICE officials have continued to execute informal raids on industries suspected to include undocumented workers, targeted noncriminal immigrants of color, and refused to comply with reforms requiring that officials receive training on admissible causes for apprehension and racial profiling (Valdez et al., 2017, pp. 548, 554, 558-559). Considering the routine distancing between immigration law and enforcement used to police immigrants more strictly than written legislation specifies, even if the Supreme Court found ICE guilty of disability rights violations and ruled that ICE must release disabled immigrants from detention, ICE could quite possibly refuse to comply with court orders, detention center medical staff tasked with diagnosing disability could intentionally fail to provide accurate diagnoses, and ICE officials would likely continue to inhumanely treat immigrants during the (hopefully shortened) process of apprehension, detainment, health screenings, and release.

Another practical consideration is that even if, contrary to the routine distancing between immigration law and enforcement, this paper's proposed lawsuit is enforced and all disabled detained immigrants are released, it is very possible that disabled immigrants' health concerns will continue to go unaddressed and that the added responsibility of seeking adequate healthcare will place an additional burden on these individuals. Various legal scholars have posited that rights claims and freedom go hand-in-hand, but that freedom is often limited, limiting, and burdensome (McCann, 2013, p. 251). For example, in his examination of rights claims, Michael

McCann cites Wendy Brown, who suggested that although rights claims can lead to emancipation, this freedom can lead to radical demands and unfulfilled promises (2013, p. 252). In the case of disabled detained immigrants, although their claims to disability rights might lead to literal emancipation and the liberty to search for better healthcare, this freedom places a heavy burden on them to navigate an unfamiliar healthcare system to find alternative or nonstandard providers that many Americans already struggle to access. Some nonprofit organizations, such as the Florence Immigrant and Refugee Rights Project and the Phoenix Allies for Community Health, offer free clinics and healthcare resources specifically for vulnerable immigrant populations in Arizona, but the reach and accessibility of these organizations across other regions of the country remain unclear (FIRRP, 2020; Salami, 2017). Even considering nonprofit efforts, the hopes of finding better healthcare might still go unfulfilled since immigrants may not find healthcare services that adequately address their needs in the regions where they live after release. Although release from detention would provide relief from the added trauma and damaging health effects of detention and the liberty to seek better healthcare services, immigrants' disability health concerns may remain unaddressed.

Lastly, regardless of its enforceable or unenforceable verdict, the argument put forth in the lawsuit could face criticism in the broader humanitarian discourse surrounding the U.S. immigrant detention regime. Arguments regarding rights claims from marginalized racial, gender, LGBTQ+, and in this case, disability, groups are often viewed by dominant groups as violating equality by giving preferential treatment to the marginalized group (McCann, 2013, p. 250). Some critics of humanitarianism have proposed that these efforts often portray violence against vulnerable groups as exceptional, which implies that the violence enacted against the rest

of the population in question is necessary, thus legitimizing institutional violence by hiding the fact that violence is integral to producing and sustaining the law (Valdez, 2020, pp. 97-98). In this line of thought, one could argue that a lawsuit to release disabled detained immigrants preferentially spares them while wrongfully suggesting that violence committed by ICE against the rest of the detainee population and violence inherent to the U.S. immigration enforcement regime is justified and targets individuals who deserve it for threatening national security.

While it is true that the proposed lawsuit in this paper focuses specifically on providing relief for disabled detained immigrants, which I did select as a vulnerable group, this decision was made due to my choice to use the legal field to attempt to create change. In my view, disability health concerns are the most severe and require consideration of past experiences with violence in order to properly identify and address, which lends to a stronger argument for ICE's violations of health rights and due process that might have a higher probability of resulting in condemnation from the court. This narrow focus is not meant to suggest that the violence committed against the rest of the detainee and undocumented immigrant population is not condemnable nor that militarized violence, targeting, and racial profiling does not occur unjustly throughout the entire immigration enforcement and policing regime. Rather, the choice to begin with a case focused on one of the more vulnerable groups in detention is meant to lead to a (hopefully) affirmative ruling to establish legal precedent to later expand my argument and push for the release of all detained immigrants on the basis of health rights violations. Supposing that the first and future lawsuits' rulings would be enforced and that all detained immigrants would be released is highly hypothetical and one could rightly argue, highly unlikely, but this line of

thought could at least provoke discussion about potential legal avenues to condemn and radically change ICE's inhumane and illegal immigrant detention system.

On a final note, in the event that the proposed lawsuit did not find ICE guilty of rights violations or if the court's orders following an affirmative ruling were unenforceable, disability rights activist groups could attempt to bring the case before the United Nations (UN) at the International Court of Justice (ICJ). For the sake of time and space, the more specific logistics and jurisdictional debates of bringing this case before the ICJ are the topic for another paper, but I will briefly discuss the purpose of bringing this case to an international stage, which is not necessarily to have the case seen and result in enforceable action. Similarly to a U.S. domestic case, a verdict in the ICJ likely will not result in an enforceable conclusion, and the ICJ may not even accept the case to hold an actual trial, but by attempting to bring the case to an international stage, U.S. disability activist groups could raise global visibility for the illegality of the U.S. immigrant detention system and engage with international activist groups dedicated to migrant, refugee, and detainee rights. Combining efforts with international activist groups and potentially having the ICJ rule on the U.S. immigration detention system's illegality could help add pressure to the U.S. to reform its practices. Even if neither a U.S. domestic or ICJ case result in concrete change, bringing these cases to court could help spark further conversation about potential avenues, both domestic and international, to reform the U.S. immigrant detention system.

Conclusion

This thesis has sought to bring together a Latin American cultural studies perspective on the systemic violence during transnational migration and a disability-informed evaluation of

ICE's violations of federal disability, discrimination, and due process law in order to conceptualize the U.S. immigrant detention system as one of multiple, interconnected stages in a chain of systemic violence inherent to the transnational migration process from the Northern Triangle through Mexico to the U.S. First, I engaged in a Latin American cultural studies analysis of migrant testimony that reveals how systemic violence produces, drives, regulates, and links Central American migrants' lived experiences during transnational migration from motivating initial decisions to migrate, exerting biopolitical, dominating and exploitative power over migrants to regulate the journey through Mexico's clandestine trafficking routes, and characterizing the U.S. immigration detention system's deterrence strategies and biopolitical control of migrants that facilitate deportation orders. Next, I argued that since the effects of trauma and violence in transit could qualify Central American migrants under disability, ICE's deterrence strategies of inhumane treatment and poor healthcare access violate disabled detained immigrants' disability health rights to adequate healthcare, freedom from discrimination, and due process during asylum and deportation proceedings. For this reason, there are sufficient legal justifications for P&A Groups to file a class action lawsuit on the behalf of disabled detained immigrants to push for their immediate release from detention. In the, albeit unlikely, event that the lawsuit would result in an affirmative and enforceable ruling, this case could provide legal precedent for a future lawsuit pushing for the release of all detained immigrants on the grounds of health rights violations.

Finally, I discussed the varied practical considerations for filing this lawsuit and enforcing its ruling. I validated concerns surrounding reforms and permissions necessary to gather plaintiffs, the rulings' unlikely enforcement due to both the routine distance between the

law and written and as practiced and the U.S. government's history of noncompliance with Supreme Court orders, and the considerable possibility that released immigrants' disability health concerns will continue to go unaddressed due to difficulty navigating an unfamiliar healthcare system that also presents challenges to much of the American public. I conclude by discussing this argument's position in broader humanitarian debates by addressing criticism that the lawsuit narrowly privileges one vulnerable group in detention by explaining my decision to focus on disabled detained immigrants due to my position that their health concerns are more severe and would contribute to a stronger legal case with a higher likelihood for an affirmative ruling that could provide legal precedent a future case advocating for the release of all detained immigrants. Regardless of whether a case taken to U.S. or international courts would result in an enforceable conclusion, I advocate for filing the lawsuit in order to attempt to create change and at the very least spark further conversation about possible avenues to reform the U.S. immigrant detention system.

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